HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.9036 of 2007

Date : 23-10-2007

Between :

Bhagyanagar Hatcheries Pvt. Ltd.
And another ..
Petitioners

And

The District Collector, Nalgonda
District and others ..
Respondents

HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.9036 of 2007

ORDER:

1. *Rule nisi* was issued on 26-4-2007 and interim direction as prayed for was granted in W.P.M.P.No.11547/2007.

2. W.V.M.P.No.1393, 1357 and 1175 of 2007 are filed to vacate the interim direction made by this Court.

3. At the request of the Counsel on record, the Writ Petition itself is being disposed of finally.

4. Sri S.Niranjan Reddy, the learned Counsel representing the writ petitioner had taken this Court through the contents of the affidavit filed in support of the Writ Petition and would submit that several representations were made in this regard, but however, contrary to the provisions of the Explosives Legislations, the respondents are proceeding with the crushing activity.

5. On the contrary, the learned Assistant Government Pleader for Industries would submit that unless and until the Explosives licenses are obtained in accordance with Law, they cannot further proceed with the activity.

6. The learned Counsel representing the

respective contesting respondents would submit that the applications for extending the explosive licenses are under process and because of the interim order granted by this Court, the said applications are not being further processed.

7. Heard the Counsel.

8. The Writ Petition is filed for a writ of mandamus declaring the action of respondents 1 to 7 in granting the explosives license to the 8th respondent and in permitting the 9th respondent without considering the petitioners objections and contrary to the provisions of the Explosive laws as illegal, arbitrary and unconstitutional and consequently to direct the respondents 1 to 7 to forthwith withdraw the license granted to the 8th respondent and not to grant license to the 9th respondent and to pass such other suitable orders.

9. It is stated in the affidavit filed in support of the Writ Petition that 1st petitioner is a Company registered under the provisions of Companies Act, 1956 having its registered office at 3-1-4-, Lingojiguda, Saroornagar, Hyderabad and engaged in the business of Poultry breeding. The petitioners are running the Poultry Farm in Sy.Nos.146 and 148 at Mailaram village, Bommalaramaram Mandal, Nalgonda District and the said poultry farm is being run since the year 2004. It is further stated that the 8th respondent is running a Crushing Unit and the 9th respondent had applied for grant of license for installation of explosive Magazine in Sy.No.139 of

Mailaram Village in and abutting Sy.Nos.145, 146 and 148 where the poultry business of the petitioners is established. It is also further stated that the 9th respondent, pending his application for grant of license and without obtaining permission from the Gram Panchayat illegally commenced the construction activity causing inconvenience to the petitioners' business and putting in danger the lives of the labour and the employees of the 1st petitioner. The 8th respondent is an existing Crushing Unit. Due to the said action of the respondents 8 and 9, the birds and employees of the petitioners are facing grave danger to their lives. The blasting is also causing cracks to the sheds constructed by the petitioners. As a result of blasting huge boulders are falling in the petitioners' premises creating havoc and danger to the lives of the birds and the employees in the said premises. It is also further stated the petitioners immediately approached the respondents 1 to 7 and made representations explaining the illegal activity carried on by the respondents 8 and 9 and also objected for granting of any license in favour of the 9th respondent for carrying on any explosive activity. In spite of the objection of the petitioners, it is stated that the official respondents in gross violation of the relevant provisions and rules are taking steps to grant license to the 8th respondent. It is also further stated that the grant of license for possession and use of explosives is governed by the provisions of the Explosives Act 1884, the Explosive Substances Act, 1908

and the Explosive Rules 1983. It is also further stated that no person shall possess, sell or use any explosives except under and in accordance with a license granted as per the scheme envisaged under the aforementioned Enactments. Further, as per Section 5 of the Explosives Act 1884, the Central Government may make Rules consistent with the Act to regulate or prohibit, except under and in accordance with the conditions of a license granted as provided by those rules, the manufacture, possession, sale transportation, import and export of explosives or any specified class of explosives. Section 6 of the said Act states that the authority prescribed under the said Rules is competent to grant or refuse the license. Further, the licencing authority shall refuse to grant the license and also suspend and revoke the license where the licencing authority deems it necessary for the security of the public peace or for public safety. It is also further stated that the Explosives Rules 1983 prescribe a strict procedure to be adopted by the concerned authority upon receiving an application for grant of license. The concerned authority is required to make such enquiries and shall refer the said application to the District authority or any other authority for such enquiry as deemed necessary. The District authority upon receipt of the said application shall cause notice and call for any objections for establishment of the factory or magazine or store house and fix a day for hearing on the said application. It is further stated that the official respondents without following the procedure contemplated under the Explosive

Laws and without considering the petitioners' objections are taking steps to grant license to the 9th respondent. The said action of the 1st respondent is illegal, arbitrary and unconstitutional. Further, it is stated that the petitioners made another representation dated 23-4-2006 to the official respondents seeking withdrawal of the license granted to the 8th respondent and not to grant license to the 9th respondent and despite the representation of the petitioners no action had been taken by the respondents so far. The said action of granting license to the respondents 7 and 8 and non-considering the petitioners' objections is violation of statutory provisions with specific reference to Explosives Act 1884, the Explosive Substances Act 1908 and the Explosives Rules 1983. In such circumstances, the petitioners approached this Court under Article 226 of the Constitution of India.

10. W.V.M.P.No.1393/2007 had been filed to vacate the interim order granted by this Court wherein it was averred on behalf of respondents 1, 4 and 5 that Sri C.Raghava Reddy had applied for grant of quarry lease for Road Metal and Building stone over an extent of 1.00 Hector in S.No.139/1 of Mylaram village, Bommala Ramaram Mandal, Nalgonda District for a period of 15 years. The said application was received on 6-6-1998. One set of application together with sketch was sent to the Mandal Revenue Officer, Bommala Ramaram for issue of No Objection Certificate and the Mandal Revenue Officer,

Bommala Ramaram vide Lr.No.B/636/98 dated 27-11-1998 had informed that the land in S.No.139 of Mylaram is classified as Government land and covered by hillock and it is not fit for cultivation and free from encroachment and the total extent is Acs.80.18 and gave No Objection Certificate for grant of quarry lease in favour of Sri C.Raghava Reddy. Basing on the said report, the Deputy Director of Mines & Geloogy, Hyderabad vide proceedings No.910/Q/1999 dated 18-5-1999 had granted quarry lease for Road Metal and Building Stone over an extent of 1.00 Hector in S.No.139/1 of ylavaram village, Bommalaramaram Mandal, Nalgonda Dst in favour of Sri C.Raghava Reddy for a period of 10 years duly imposing a condition that the grantee should not use explosives in conducting quarrying operations without obtaining the explosive license from the competent authority. The grantee had executed the quarry lease deed on 3-11-1999 and as such the lease is in force upto 2-11-2009. It is further averred in para-3 of the counter affidavit that as per the consent letter filed by the transferee and transferor, the aforesaid lease was transferred in favour of M/s.Saileela Rock Industry, vide Deputy Director of Mines & Geology, Hyderabad proceedings No.910/Q/Nlg/99 dated 26-4-2005. The transfer lease deed was executed by M/s. Saileela Rock Industry on 20-5-2005 for the unexpired period of quarry lease upto 2-11-2009. It is further averred that the contention of the petitioners that the Department had not considered their request and issued license to the

respondents is not correct and baseless since both the leases were granted prior to the date of receipt of their representation. It is specifically averred that the petitioners made objections only on 4-4-2007, but both the leases were granted much prior to 4-4-2007. It is further averred in para-6 of the counter affidavit that it is true that the 8th respondent is running a Crushing Unit. The 8th respondent had applied for issue of license to the competent authority duly obtaining the permission from the respective Departments. The 9th respondent had not commenced the quarrying operations since the date of execution of the quarry lease deed. It is also further averred in para-7 of the counter affidavit that M/s.Raja Rajeshwari Stone Crusher had applied for grant of quarry lease for rough stone and road metal over an extent of 5.00 Hectors in S.No.139/1 of Mylaram village, Bommala Ramaram Mandal, Nalgonda District for a period of 15 years. The said application was received on 23-6-2006 and one set of application together with the sketch was sent to the Mandal Revenue Officer, Bommala Ramaram for issue of No Objection Certificate vide Lr.No.B/1822/2006 dated 10-7-2006 who issued No Objection Certificate for grant of quarry lease in the aforementioned area in favour of M/s. Raja Rajeswari Stone Crusher stating that the said land is not suitable for cultivation and free from encroachment. The Deputy Director of Mines & Geology, Hyderabad vide Proceedings No.3279/Q-II(1)/2006 dated 12-10-2006 had granted a quarry lease for rough stone and road metal

over an extent of 5.00 Hectors in S.No.139/1 of Mylaram village, Bommala Ramaram Mandal, Nalgonda District in favour of M/s.Raja Rajeshwari Stone Crusher for a period of 15 years duly imposing a condition that the grantee should not use explosives in conducting quarrying operations without obtaining the explosive license from the competent authority. It is also further averred in para-8 of the counter affidavit that the grantee had executed the quarry lease deed on 13-10-2006 and as such the lease is in force upto 12-10-2021 and necessary permission was accorded to erect the stone crusher unit within the leased area. M/s.Raja Rajeswari Stone Crusher had not constructed any crusher till today and they had obtained permissions from :

1. Director of Factories, Hyderabad in Letter No.D.Dis/D2/NLG-II/22204/2006 dated 22-11-2006;
2. Superintending Engineer, Operation Circle, Nalgonda in Memo No.SE/OP/NLG/Comml.2/F.No.HT/D.No.3098/2006;
3. Environmental Engineer, A.P. Pollution Control Board, Nalgonda in Order No.16627/PCB/RO-NLG/CFE/SE/2006 dated 8-12-2006.

Further, it is stated that the petitioners through representation dated 4-4-2007 had requested not to grant license in favour of M/s.Raja Rajeswari Stone Crusher, but the leases were granted much prior to the date of representation. Further, in reply to paras 6 and 7 of the affidavit filed in support of the Writ Petition, it is averred that the 9th respondent had not commenced the quarrying operations and had not erected stone crushing unit till today. The 8th respondent had obtained

permissions for getting license from the District Collector under the Explosives Act from :

1. Gram Panchyat, Mylaram in Certificate dated 5-8-2005;
2. Superintendent of Police,Nalgonda in Lr.No.80/G1/2006 dated 24-3-2006;
3. Revenue Divisional officer, Bhongir in Lr.No.F/3287/2005 dated 14-12-2005;
4. Mandal Revenue Officer, Bommala Ramaram in Lr.No.B/1668/2005 dd18-11-2005;
5. District Fire Officer, Nalgonda in Rc.No.1381/A3/2004 dated 2-12-2005.

It is further stated that the petitioner had filed a representation before the District Collector, Nalgonda stating that the unit is carrying activity by which there is danger to the lives of human beings as well as cattle and birds. Further, it is stated that no complaint about the damage occurred due to the quarrying operations had been received since 1998 till 4-4-2007. Further, it is stated that the distance between M/s. Saileela Rock Industry and M/s.Bhagyalaxmi Hatcheries Pvt. Ltd. Is 250 meters. It is also further averred that M/s. Saileela Rock Industry had applied for issue of license under Explosives Act duly obtaining the clearances/permissions from the Departments referred supra for getting license from the District Collector and it is under process. M/s.Raja Rajeshwari Stone Crusher had not commenced any quarrying operations since the date of execution of quarry

lease deed and had not erected the Stone Crusher till today. Further, it is stated in para-12 of the counter affidavit that the petitioner had filed complaint not to grant licenses to the respondents, but the leases were granted prior to the date of receipt of the complaint. The applications filed for explosive license to the District Collector are under process. Moreover, as per the interim directions of this Court dated 26-4-2007, M/s. Saileela Rock Industry was instructed on 4-5-2007 not to carry any explosive activity in the quarry leased area.

11. In the counter affidavits filed in support of vacate applications W.V.M.P.Nos.1357 and 1175/2007 by the respondents 8 and 9 respectively, substantially similar stand had been taken. It is stated in the counter affidavit filed by the 8th respondent in W.V.M.P.No.1175/2007 that in fact there is no blasting operation carried by the 8th respondent at any point of time as alleged by the petitioners and the Unit is waiting for getting license from the District Collector and the Joint Chief Controller of Explosives concerned. Further, several other facts had been narrated.

12. Likewise, in the counter affidavit filed by the 9th respondent in W.V.M.P.No.1357/2007 specific stand had been taken that necessary approvals had been obtained and specific stand had been taken that no explosives are being used and there are no agricultural

lands nearby the leased area and the village of 2 K.Ms. away from Mylaram village, Bommalaramaram Mandal, Nalgonda District. The matter was referred to the Mandal Revenue Officer in Lr.No.B/1822/2006 dated 10-7-2006 and it was reported that the total extent of Acs.12.20 gts. in Sy.No.139/1 of Mylaram village, Bommalaramaram Mandal, Nalgonda District classified as Gyraan covered byhillock and not suitable for cultivation and free from encroachments. The applied area is 2 K.Ms. away from Mylaram village and the villagers of Mylaram had not filed any objections and hence No Objection Certificate was issued. After clearance from all the authorities and at the instructions of the Government, quarry lease was granted by the Deputy Director in Proc.No.3279/Q.II(1)/2006, dated 12-10-2006 with a condition to establish crushed sand unit within a period of two years. The Assistant Director of Mines and Geology executed the lease deed on behalf of the State on 13-10-2006 and sanction was accorded for a period of ten years i.e., from 13-10-2006 to 12-10-2016. The lease granted is in Sy.No.139/1 which is 2 K.Ms. away from the village. The case of the writ petitioner is that he holds a poultry farm in Sy.No.146 and 148 which is quite far away from the leased area. It is also further stated that the 9th respondent was granted mining lease and he had also obtained necessary permission from various authorities viz., (1) Approval from Director of Factories, (2) Sanction of Power connection, (3) Sanction of permission by ADMG for crushing unit, (4) Registered as Small Scale Industry and (5) Necessary

policy permission. All the authorities had granted permission only after visiting the spot and holding a due enquiry following the due process of law and particularly keeping in view the safety and public peace. In reply to para-6 of the affidavit filed in support of the Writ Petition, at para-5 of the counter affidavit it is stated that the 9th respondent was granted quarry lease and he had submitted necessary application for construction in terms of Panchayat Raj Act and the construction is done as per rules. By making construction, the petitioner is no way affected nor any inconvenience is caused to his business and this itself is a sufficient proof to demonstrate that the intention behind the filing of the Writ Petition is to stop the business and activity of the 9th respondent. The Writ Petition is filed against the establishment of unit on false grounds and on false allegations that the unit is carrying activity by which there is danger to life. When there is no blasting activity carried at all by the 9th respondent, there arises no question of danger to the birds, employees lives and properties. While granting consent for establishment by the A.P. Pollution Control Board, the Pollution Control Board had done its trial blasting and found no noise pollution. The sheds constructed by the petitioner are far away from the leased land and when there is no blasting, the question of causing cracks or failing of huge boulders in the premises of the Writ Petition does not arise. It is only hooked out for filing of the Writ Petition and for an interim order. When the 9th respondent was granted

quarry lease, the operations of the 9th respondent are legal and cannot be called illegal. Further it is stated that no explosives are used and there are no agricultural lands nearby to the leased area. The village is 2 K.Ms. away and the Mylaram thanda is 2 K.Ms. away from the unit. The bus stage is also at a far off distance. The A.P. Pollution Control Board grants its consent only after thorough inspection of all the issues and there cannot be any apprehension of dust during the process of crushing of the stones which is taken care of by the A.P. Pollution Control Board. Further it is stated that the employees working in the hatchery farm of the writ petitioner are not from the Mylaram village or from the District and they are from the other region. The establishment of crusher/crushed sand unit gives employment to 100 needy people in the unit. The Writ Petition is filed with an ill-motive and to see that no other units come in and around so that the writ petitioner can have the control over the village and only with that intention the writ petitioner is habituated to file false representations. In reply to paras 9, 10, 11 and 12 of the affidavit filed in support of the Writ Petition, it is stated that any permission granted can only be under the provisions of the Explosives Act 1884 and the rules thereunder. The operation if any to be conducted is only after passing necessary orders. The 9th respondent had obtained necessary approvals and the petitioner came forward with false allegations against the unit and filed the Writ Petition and got interim direction from this Court.

13. In the light of the respective stands taken by the parties, this Court is of the considered opinion that unless and until explosive licenses are obtained, no activity in this regard to be proceeded with and it is stated that the requisite applications are pending before the competent authority and they are not being processed because of the pendency of the Writ Petition. It is needless to say that it is for the concerned authorities to look into the grievances ventilated even by the writ petitioner in this regard and take appropriate decision in this regard at the earliest point of time and till then, no explosive activity to be carried on.

14. With the above directions, the Writ Petition is disposed of. No costs.

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Justice P.S. Narayana

Date : 23-10-2007

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